

HOUSE BILL No. 1744

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-18.

Synopsis: Medical malpractice. Permits a patient who has filed a malpractice claim to employ a lay advocate to assist in the presentation of medical evidence to the medical review panel. Provides that a patient may bring a malpractice action without first submitting a claim to the medical review panel if the patient seeks less than \$50,000 in damages. Adds two lay members to the medical review panel and provides that the chairperson of the medical review panel shall select the lay members from a jury panel. Provides that lay members of the medical review panel are entitled to a per diem of \$100, subject to a \$1,000 cap.

Effective: July 1, 2003.

Scholer

January 21, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1744

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-18-8-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. **(a)** Subject to
3 IC 34-18-10 and sections 4 through 6 of this chapter, a patient or the
4 representative of a patient who has a claim under this article for bodily
5 injury or death on account of malpractice may do the following:

6 (1) File a complaint in any court of law having requisite
7 jurisdiction.

8 (2) By demand, exercise the right to a trial by jury.

9 **(b) Subject to the approval of the trial court, a patient who has**
10 **filed a malpractice claim under subsection (a) may employ a lay**
11 **advocate to assist in the presentation of medical evidence to the**
12 **medical review panel.**

13 SECTION 2. IC 34-18-8-6 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Notwithstanding
15 section 4 of this chapter, a patient may commence an action against a
16 health care provider for malpractice without submitting a proposed
17 complaint to a medical review panel if the patient's pleadings include



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a declaration that the patient seeks damages from the health care provider in an amount not greater than ~~fifteen fifty~~ thousand dollars ~~(\$15,000)~~ **(\$50,000)**. In an action commenced under this subsection (or IC 27-12-8-6(a) before its repeal), the patient is barred from recovering any amount greater than ~~fifteen fifty~~ thousand dollars ~~(\$15,000)~~ **(\$50,000)**, except as provided in subsection (b).

(b) A patient who:

(1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal) in the reasonable belief that damages in an amount not greater than ~~fifteen fifty~~ thousand dollars ~~(\$15,000)~~ **(\$50,000)** are adequate compensation for the bodily injury allegedly caused by the health care provider's malpractice; and

(2) later learns, during the pendency of the action, that the bodily injury is more serious than previously believed and that ~~fifteen fifty~~ thousand dollars ~~(\$15,000)~~ **(\$50,000)** is insufficient compensation for the bodily injury;

may move that the action be dismissed without prejudice and, upon dismissal of the action, may file a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as were asserted in the action dismissed under this subsection. In a second action commenced in court following the medical review panel's proceeding on the proposed complaint, the patient may recover an amount greater than ~~fifteen fifty~~ thousand dollars ~~(\$15,000)~~ **(\$50,000)**. However, a patient may move for dismissal without prejudice and, if dismissal without prejudice is granted, may commence a second action under this subsection only if the patient's motion for dismissal is filed within two (2) years after commencement of the original action under subsection (a) (or IC 27-12-8-6(a) before its repeal).

(c) If a patient:

(1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal);

(2) moves under subsection (b) (or IC 27-12-8-6(b) before its repeal) for dismissal of that action;

(3) files a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as were asserted in the action dismissed under subsection (b) (or IC 27-12-8-6(b) before its repeal); and

(4) commences a second action in court following the medical review panel proceeding on the proposed complaint;

the timeliness of the second action is governed by IC 34-18-7-1(c).

(d) A medical liability insurer of a health care provider against

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whom an action has been filed under subsection (a) (or IC 27-12-8-6(a) before its repeal) shall provide written notice to the state health commissioner as required under IC 34-18-9-2.

SECTION 3. IC 34-18-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A medical review panel consists of one (1) attorney, ~~and three (3) health care providers,~~ **and two (2) lay members selected from the jury panel of the county in which the alleged act of malpractice occurred, in accordance with section 10.5 of this chapter. The lay members may not be employed as attorneys or health care providers or work in a field closely associated with attorneys or health care providers.**

(b) The attorney member of the medical review panel shall act as ~~chairman~~ **chairperson** of the panel and in an advisory capacity but may not vote.

(c) The ~~chairman~~ **chairperson** of the medical review panel shall expedite the selection of the other panel members, convene the panel, and expedite the panel's review of the proposed complaint. The ~~chairman~~ **chairperson** may establish a reasonable schedule for submission of evidence to the medical review panel but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities.

SECTION 4. IC 34-18-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. **(a) This section only applies to a panel member who is a health care provider.**

(b) Within ten (10) days after the selection of a panel member, written challenge without cause may be made to the panel member. Upon challenge or excuse, the party whose appointee was challenged or dismissed shall select another panelist. If the challenged or dismissed panel member was selected by the other two (2) panel members, the panel members shall make a new selection. If two (2) such challenges are made and submitted, the chairman shall within ten (10) days appoint a panel consisting of three (3) qualified panelists and each side shall, within ten (10) days after the appointment, strike one (1) panelist. The party whose appointment was challenged shall strike last, and the remaining member shall serve.

SECTION 5. IC 34-18-10-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10.5. (a) Within fifteen (15) days after the chairperson is selected, the chairperson shall request, in writing, that a circuit court judge in the county in which the alleged act of malpractice occurred summon a jury panel from which the chairperson may select the lay members of the medical**

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1 review panel. The court shall direct the sheriff to summon not
 2 more than eighteen (18) competent jurors. The chairperson shall
 3 interview the jurors and select the two (2) jurors whom the
 4 chairperson feels are most qualified to serve as lay members of the
 5 medical review panel.

6 (b) A juror serving as a lay member of the medical review board
 7 may seek relief from service as a lay member of the medical review
 8 panel in the same manner as a juror selected to serve on a jury.

9 SECTION 6. IC 34-18-10-25 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. (a) Each health care
 11 provider member of the medical review panel is entitled to be paid:

12 (1) up to three hundred fifty dollars (\$350) for all work performed
 13 as a member of the panel, exclusive of time involved if called as
 14 a witness to testify in court; and

15 (2) reasonable travel expense.

16 (b) The chairman of the panel is entitled to be paid:

17 (1) at the rate of two hundred fifty dollars (\$250) per diem, not to
 18 exceed two thousand dollars (\$2,000); and

19 (2) reasonable travel expenses.

20 (c) Each lay member of the medical review panel is entitled to
 21 be paid:

22 (1) at the rate of one hundred dollars (\$100) per diem, not to
 23 exceed one thousand dollars (\$1,000); and

24 (2) reasonable travel expenses.

25 (d) The chairman shall keep an accurate record of the time and
 26 expenses of all the members of the panel. The record shall be submitted
 27 to the parties for payment with the panel's report.

28 (e) Fees of the panel, including travel expenses and other
 29 expenses of the review, shall be paid by the side in whose favor the
 30 majority opinion is written. If there is no majority opinion, each side
 31 shall pay fifty percent (50%) of the cost.

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